

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GARY ZIERKE,

Plaintiff,

vs.

MATTHEW MOLSEN, and RICHARD
G. KOPF, District Judge;

Defendants.

4:21CV3187**MEMORANDUM AND ORDER**

This matter is before the court on Plaintiff's Motion for Extension of Time to pay his initial partial filing fee. [Filing 10](#). Plaintiff indicates that "it may be extremely [sic] difficult to pay the initial fee" due to present lack of funds and the death of his father, who was his primary source of income. *Id.* Plaintiff requests an "initial ruling he will pay as the money comes in" or, alternatively, a 30-day extension. *Id.* Upon consideration, the court will grant Plaintiff's request for a 30-day extension.

Plaintiff's alternative request for a waiver of the initial partial filing fee payment is denied at this time. Under the Prison Litigation Reform Act ("PLRA"), an indigent inmate who files a lawsuit in federal court must pay the \$350.00 filing fee, first by making an initial partial payment and then by sending the remainder of the fee to the court in installments. The method for collecting the filing fee from a prisoner is specifically provided for in [28 U.S.C. § 1915\(b\)](#). [Section 1915\(b\)](#) is written in mandatory terms ("the prisoner shall be required to pay"), leaving no discretion to the district court to waive an in forma pauperis prisoner's filing fee. However, the PLRA also provides that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." [28 U.S.C. § 1915\(b\)\(4\)](#). If Plaintiff is unable to pay the initial partial filing fee within the extended time frame, the court will enter an order requiring Plaintiff to show cause for

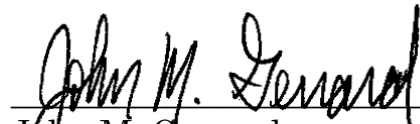
his failure to pay and Plaintiff will have an opportunity to demonstrate his inability to pay.¹

IT IS ORDERED that:

1. Plaintiff's Motion for Extension of Time, [Filing 10](#), is granted. Plaintiff shall have until December 8, 2021, to pay his initial partial filing fee of \$87.67.
2. Plaintiff's request for a waiver of the initial partial filing fee payment is denied at this time.
3. The Clerk of Court is directed to set a pro se case management deadline using the following text: December 8, 2021: initial partial filing fee payment due.

Dated this 28th day of October, 2021.

BY THE COURT:



John M. Gerrard
United States District Judge

¹ The court notes that at the time Plaintiff filed this action he had approximately \$70 in his institutional trust account. ([Filing 3](#).)